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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,247	10/14/2003	Gary T. Danc	SMI0077.US	3999
7590		11/16/2007		
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			EXAMINER	
			CASTELLANO, STEPHEN J	
			ART UNIT	PAPER NUMBER
			3781	
			MAIL DATE	DELIVERY MODE
			11/16/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/685,247

Applicant(s)

DANE ET AL.

Examiner

/Stephen J. Castellano/

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-24 is/are pending in the application.
- 4a) Of the above claim(s) 10-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-9 and 18-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

Claim 2 has been canceled. Claims 1 and 3-24 are pending.

Claims 10-17 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Election was made **without** traverse in the reply filed on April 20, 2006.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 18-20 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schafer in view of Liu.

Schafer discloses a sterilization case assembly comprising a plurality of cases (box units 10), second case (any case 10 stacked directly above a first case 10) stacked upon a first case (any case 10 stacked directly below a second case) in vertical direction, the front side of the assembly is toward the right of the Fig. 2 view, the second case is offset from the first case in the Fig. 1 view, each of the cases are movable between closed and open positions (by rear wall means 18 defined by a removable cover as stated at col. 2, lines 16-17). Schafer discloses the general box shape and each case having top and bottom walls, the bottom wall of a second case directly contacting the top wall of a first case. Although the top and bottom walls are generally horizontal, the top and bottom walls are not parallel or substantially parallel. The Official notice taken in the Office action mailed March 8, 2007 that substantially parallel and fully parallel top and bottom walls and rear and front walls of stacked bins are well known and more typical than top and bottom walls which are slightly skewed from parallel has not been challenged. The

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Official notice is now being treated as a prior art admission. It would have been obvious to modify the top and bottom walls of each case to be parallel, to modify the bottom wall of one case to be parallel with the top wall of another case, to modify the front and rear walls of each case to be parallel (claim 20) and to modify the rear walls of adjacent stacked cases to be parallel in order to modify the cubic space to be square or rectangular in shape to provide uniform and constant height, width and depth so that the interior can be filled with square and rectangular shaped items of the same shape with no loss of the interior volume.

Schafer discloses the invention except for the drawers. Liu teaches a similar stackable case assembly with drawers. It would have been obvious to modify each of the cases (box units 10) of Schafer to have their rear walls defined by removable covers to be replaced with drawers as the access to the drawer from the top is easier and usually better lighted than the side access of the removable cover.

Re claim 3, a case could be defined by a plurality of box units, then one case having a plurality of box units 10 includes a plurality of drawers.

Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schafer in view of Liu as applied to claims 3 and 1 above, and further in view of Holsinger.

The combination of Schafer and Liu discloses the invention except for the hinged front cover of claim 4 and the hinged lid of claim 5. Holsinger teaches a hinged front cover and a hinged lid. It would have been obvious to add the front cover and lid to add additional closing to the drawer structure and cases to add to the security of closure as drawers may inadvertently open and spill their contents.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schafer in view of Liu and Holsinger as applied to claim 5 above, and further in view of Hunnell et al (Hunnell).

The Schafer-Liu-Holsinger combination discloses the invention except for the lid being removable. Hunnell teaches a removable lid. It would have been obvious to modify the hinged lid to be removable to replace the lid in case of breakage or damage without the need to replace the entire container.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schafer in view of Liu and Holsinger as applied to claim 5 above, and further in view of Trower.

The combination discloses the invention except for the handle and recessed pocket. Trower teaches a handle and recessed pocket interlocking means. It would have been obvious to add the handle and recessed pocket of Trower to provide secure fastening in the stacked position to prevent stacked articles from separating.

Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schafer in view of Liu and Trower.

Schafer discloses the invention except for the drawers, handle and recessed pocket. Liu teaches the drawers and is combined with Schafer as previously discussed for the rejection combining Schafer and Liu. Trower teaches a handle and recessed pocket interlocking means. It would have been obvious to add the handle and recessed pocket of Trower to provide secure fastening in the stacked position to prevent stacked articles from separating.

Claims 21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schafer in view of Liu as applied to claims 1 and 18 above, and further in view of Tabler.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schafer in view of Liu and Trower as applied to claim 9 above, and further in view of Tabler.

Schafer-Liu and the Schafer-Liu-Trower combinations, all individually disclose the invention except for the top and bottom registration elements. Tabler teaches in Fig. 12 identical trays, a top wall top registration element of bottom most tray with the groove that engages flange 17 of the second bottom most tray (the groove between walls 9 and 10) and a bottom wall bottom registration element of flange 17. The top registration element being closer to the rear wall than the bottom registration element. It would have been obvious to modify the stacking configurations to have these registration elements to provide more stability to the stacked configuration. It would have been obvious as a matter of design choice to choose partly spherical shaped elements.

Applicant's arguments filed October 16, 2007 have been fully considered but they are not persuasive. The grounds of rejection are old yet the claims to which they are applied has changed.

Applicant has now decided to challenge the Official notice taken in the non-final action mailed March 8, 2007 that parallel top and bottom walls and parallel rear and front walls of stacked bins are well known. Applicant's challenge is not timely as applicant's response filed June 8, 2007 failed to challenge the Official notice.

Schafer, Trower and Liu are not sterilization cases or bins perse. However, a sterilization case has no specific structure assigned that would differentiate any other case, bin or box from performing the sterilization function. Should non-sterile items be placed in the cases of Schafer,

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Trower and Liu and subjected to either heat of sterilization or immersed in a sterilizing fluid such items would become disinfected and sterile.

Applicant's statement that Schafer's units 10 are not stacked offset is not well taken.. Applicant considers the bottom of an immediately upwardly adjacent unit to be aligned without considering the remainder of the unit including its top wall. The top wall of an upper unit is offset as is the sidewall structure. Applicant has not sufficiently limited the claims so that the bottom wall must be considered to be offset from the top wall of the unit stacked upon.

Applicant's speculation that adding a drawer would likely topple the units of Schafer is purely speculative. These remarks are not based on sufficient analysis to draw a reasonable conclusion. The statement is a somewhat far reaching conclusion. Even if the stacked units were to topple, there is no limitation addressing stability or a free standing nature of the case assembly.

Trower is described by applicant has a single unit and not modular. Figure 3 of Trower clearly shows an exploded view showing that the units are separable and reattachable by the recess pocket and handle connection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 571-272-4535. The examiner can normally be reached on increased flexibility plan (IFP).

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Stephen J. Castellano/
Primary Examiner
Art Unit 3727

sjc